IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

WP(C).No. 17168 of 2007(R)

AGAINST THE ORDER DATED 25/05/2007 IN IA 1795/07 IN OS.260/2007 of I ADDL.SUB COURT, THRISSUR

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PETITIONER:

K.V.HAMZA, S/O.PULIKKAL M.A.KUTTY @ KUNHIMON, VADAKKEKKAD AMSOM DESOM, CHAVAKKAD TALUK.

BY ADV. SRI.K.RAMACHANDRAN
SMT.R.MEERA

RESPONDENT:

PUSHPASREE, TEACHER, D/O.VAKKAYIL KALYANIKKUTTY AMMA, PUTHAMBALLY DESOM, IRINGAPRAM AMSOM, CHAVAKKAD TALUK.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.17168/2007 R

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE AFFIDAVIT AND PETITION IN I.A.1795/07 IN O.S.260/07 OF THE SUB COURT, THRISSUR DTD. 14/03/2007.**

EXT.P2: **COPY OF THE OBJECTION FILED BY THE RESPONDENT TO EXT.P1, DTD. 23/03/2007.**

EXT.P3: **COPY OF THE ORDER OF THE SUB COURT, THRISSUR DTD. 25/05/2007 IN I.A.NO.1795/07 IN O.S.NO.260/07.**

/TRUE COPY/

P.S.TO JUDGE

KSS

M.N.KRISHNAN, J

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W.P.(C) No.17168 OF 2007

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Dated this the 3rd day of August 2007

JUDGMENT

This writ petition is filed challenging the order of the Sub Court, Thrissur in I.A.No.1795 of 2007 in O.S.No.260 of 2007. The suit is one for specific performance of the contract in the alternate one for recovery of the advance amount. Along with the suit the plaintiff moved an application for interim attachment of the property and the respondent entered appearance. It appears from the order of the court below that the respondent's counsel conceded to a suggestion (whose suggestion, it is not known) that there can be the attachment of the entire petition schedule properties, if the plaintiff deposits the entire balance consideration in court. The court directs the plaintiff in the suit to deposit the entire balance amount due under the agreement. I am afraid that such an order cannot be passed. The question to be considered under Order XXXVIII Rule 5 is that whether there is any attempt or intention for the defendant to transfer the property and then pass an order of conditional attachment directing the defendant to show cause or to furnish security of the amount. The order suffers from infirmity. Therefore it is set aside and the matter is remitted back to the court below

for fresh consideration on merits or on the basis of any undertaking in accordance with law within 4 weeks from today.

Parties are directed to appear before the court below on 20.8.2007.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-